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IN THE

Supreme Court of the United States

OCTOBER TERM 1962

No. 289

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*,

v.

JOHN SLAUGHTER, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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DECISION TO BE REVIEWED

Petitioner prays that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the District of Columbia Circuit entered on May 3, 1962.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals (R. 5) is not yet reported. (See App. 5a) 302 F(2) 912

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., § 1254(1) and Rule 19, 1(b) of this Court. This petition is filed under 28 U.S.C., § 2101(c). The decision and judgment sought to be reviewed was entered May 3, 1962 (R. 12).

QUESTIONS PRESENTED

1. Are "false arrest" and "false imprisonment" "injuries" within the meaning of that term as used in the Federal Employers' Liability Act? (R. 6)

2. Is negligence in procuring "false arrest" and "false imprisonment", "negligence" within the meaning of that term as used in the Federal Employers' Liability Act? (R. 6, 7)

STATUTE INVOLVED

The pertinent statute involved is 45 U.S.C., § 51, 53 Stat. 1401, Appendix A, page 1 hereof.

STATEMENT OF THE CASE

The Bill of Complaint alleges that on August 7, 1959, Respondent reported for work on one of Petitioner's passenger trains. After serving several passengers he was relieved of his duties and upon arrival of the train at Jesup, Georgia, Respondent was turned over to the local police, charged with drunk and disorderly conduct. He was detained overnight and released the following morning upon posting bail. Respondent alleged he was neither intoxicated nor disorderly (par. 4-6).

On or about August 29, 1960, Respondent had filed a common law action against Petitioner in the United

States District Court for the District of Columbia, Civil Division, claiming damages for false arrest and false imprisonment. On October 27, 1960, that suit was dismissed because of the bar of the local one-year statute of limitations (R. 5, Appendix A, p. 3).

Thereafter, Respondent filed this suit for "false arrest and false imprisonment" under the FELA (R. 1), which has a three-year statute of limitations (45 U.S.C., § 56, Appendix A, p. 2). The District Court granted Petitioner's Motion to Dismiss on the ground that the Complaint failed to state a cause of action under the Act. The lower court reversed, holding the Complaint did state a cause of action under the Act.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that "false arrest" and "false imprisonment" are "injuries" within the meaning of that term as used in the Federal Employers' Liability Act.

2. In holding that the procurement of "false arrest and false imprisonment" constitutes "negligence" within the meaning of that term as used in the Federal Employers' Liability Act (R. 6, 7).

3. In reversing the District Court.

REASONS FOR GRANTING THE WRIT

Certiorari lies under Rule 19, 1(b) of this Court, for that:

1. *The decision of the Circuit Court of Appeals is in direct conflict with the decision of another Court of Appeals on the same matter.* The lower court stated

in clear and explicit language that the precise questions here presented were presented to and answered by the United States Court of Appeals for the Third Circuit in the case of *Forgione* v. *United States*, 202 F. 2d 249 (1953), certiorari denied by this Court, 345 U.S. 966.

There, on the formal complaint of the ship captain that Forgione, a merchant seaman, had been intoxicated on board ship and had threatened and assaulted other crew members, the United States Military Police arrested him while on shore leave at Bari, Italy, and imprisoned him until the ship left port seven days later. He sued the United States as owner of the ship for "false arrest and false imprisonment" under the Merchant Marine Act of 1920 (41 Stat. 988, 46 U.S.C. § 688; Appendix A, page 3), commonly known as the Jones Act, which incorporates the Federal Employers' Liability Act by reference.

The Third Circuit Court of Appeals ruled that "false arrest" and "false imprisonment" *are not* "injuries" and negligence in procuring same *is not* "negligence" within the meaning of those terms as used in the Federal Employers' Liability Act, and hence the District Court *did not* have jurisdiction of the cause of action under the Jones Act. This Honorable Court denied certiorari, 345 U.S. 966.

In the present case the Court of Appeals for the District of Columbia ruled to the contrary.

In its opinion, the lower court said: "Although the Third Circuit Court of Appeals has held that action for false arrest may not be brought under the Jones Act, we believe that that Court reached an erroneous result" (R. 5); and in footnote 5, on the same page,

the lower court further said: "Thus *Forgione* is not distinguishable from the present case."

So there is not only an explicit conflict between two Circuit Courts of Appeals, but inferentially, with this Court as well.

2. *The issues here presented involve important questions of Federal law.* It is important that this clear conflict of decisions be resolved by this Court, particularly because of its impact not only on all railroad companies and their employees engaged in interstate commerce, but also on the United States and other persons or corporations and their employees engaged in the operation of merchant vessels.

3. *Forgione* v. *United States correctly interprets the statute.* The principal decision of this Court relied upon by the lower court is *Jamison* v. *Encarnacion*, 281 U.S. 635. In that case, Encarnacion, a longshoreman, was struck by his foreman, to hurry him about his work, and was seriously injured. He sued under the Jones Act. *Jamison* was cited and relied upon by Forgione as conferring jurisdiction in his case under the Jones Act and was considered by the Third Circuit Court of Appeals in *Forgione* v. *United States, supra.* In the course of its opinion, that Court said (p. 252):

> "Though the common law principle of negligence has been extended under the Jones Act by the *Jamison* case and other decisions, there is no justification for holding that it is broad enough to include false arrest and false imprisonment which consist of arrest or restraint without adequate legal justification and are utterly unrelated to negligence. We therefore hold the Jones Act unavailable to appellants."

And in note 5 on the same page, that court further said:

> "That Act gives a remedy to seamen 'who shall suffer personal injury' in the course of their employment. We are satisfied that the wrongs here claimed do not come within the quoted language."

It is thus clear that in 1953 the *Jamison* case was twice rejected by *Forgione* as authorizing a suit for false arrest and false imprisonment under the Jones Act. Now nine years later, the lower court has ruled that in *Forgione* the Third Circuit Court of Appeals "reached an erroneous result" (R. 9) and inferentially at least it has suggested that this Court also "reached an erroneous result" when it denied certiorari.

In support of its interpretation of this Court's decision in the *Jamison* case, the lower court sets out in a footnote (R. 8) an excerpt from *Urie* v. *Thompson*, 337 U.S. 163, 181-182. It is respectfully submitted that read in context, the connotation of the excerpt is not as sweeping as inferentially ascribed to the excerpt by the lower court read out of context.

At the outset of its opinion in the *Urie* case this Court said:

> "The primary question is whether the coverage of the Federal Employers' Liability Act and the Boiler Inspection Act includes injuries in the nature of occupational disease, here silicosis, or is confined exclusively to injuries inflicted by accident" (p. 165).

Read in context, the clear import of the quoted language is that "The coverage (of the Act) is not confined to injuries resulting from accidents *but*

includes injuries in the nature of occupational diseases, such as silicosis." (Syl. 1, p. 163, emphasis supplied). There is not the slightest justification in broadening its intendment to include false arrest and false imprisonment.

The chronology of these three cases confirms the error of the lower court. *Jamison* was decided by this Court in 1930, *Urie* in 1949, and in 1953, four years later, the Third Circuit decided *Forgione* and this Court denied certiorari. Consequently, if any inference is logically to be indulged in, it is that, in denying certiorari in *Forgione* this Court concluded neither *Jamison* nor *Urie* justified a holding that the terms "injury" and "negligence" as used in the Federal Employers' Liability Act are broad enough to include false arrest and false imprisonment.

4. *The Bill of Complaint does not state a cause of action under the Federal Employers' Liability Act.* In reporting out the bill, the House Committee (Report No. 1386, April 4, 1908, accompanying H.R. 2031, 60th Congress, 1st Session) said:

> "The purpose of this bill is to change the common law liability of employers of labor in this line of commerce for *personal injuries* received by employees in the service . . ." (Emphasis supplied; cf. note 5, R. 9)

The Senate Committee, in reporting out the bill (S. Rep. 460, 60th Congress, 1st Session) stated that it was designed to achieve the broad purpose of promoting "the welfare of both employer and employee by adjusting *the losses and injury, inseparable from industry and commerce* to the strength of those

who in the nature of the case ought to share the burden." (Emphasis supplied)

CONCLUSION

Petitioner respectfully submits the United States Court of Appeals for the District of Columbia Circuit erred in its decision and judgment of May 3, 1962, and prays that writ of certiorari issue to said Court to review said decision and judgment.

Respectfully submitted,

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